IN THE HIGH COURT OF JUDICTURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Amol Singh. Versus State of Rajasthan

S.B. Criminal Misc. Petition No. 166/2002

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Amol Singh. Versus State of Rajasthan

S.B. Criminal Misc. Petition No. 535/005

and

Dilbhajan Singh. Versus State of Rajasthan

S.B. Criminal Misc. Petition No. 2232/2005 (DR.J)

...

Date of Order: January 24, 2007

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. S.L. Jain, for the petitioners.
Mr. S.N. Tiwari, Public Prosecutor for the State.

BY THE COURT:

All the three criminal miscellaneous petitions under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) involve common questions of law and

facts and arise out of one and the same FIR, being FIR No.202/1998, Police Station, Sadar, Bikaner and, therefore, with the consent of the learned counsel for the parties, they are being heard and decided together.

The facts and circumstances giving rise to these criminal miscellaneous petitions are that complainant Jagdish Prasad Gupta lodged an FIR, being FIR No. 202/1998, on 19.6.1998 for the offences under Sections 406, 409, 415, 418, 420 read with Section 120-B, IPC. Petitioner Amol Singh in S.B. Criminal Misc. Petition No. 535/2005 and petitioner Dilbhajan Singh in S.B. Criminal Misc. Petition No. 2232/2005 {D.R. (J.) } seek quashing of the FIR and petitioner Amol Singh in S.B. Criminal Misc. Petition No.166/2002 seeks quashing of the proceedings initiated against him under Sections 82 and 83 of the Code.

I have heard learned counsel for the parties. Carefully gone through the proceedings initiated against petitioner Amol Singh under Sections 82 and 83 of the Code, as also the FIR and the report received from the investigating officer dated 21-11-2006.

So far as S.B. Criminal Misc. Petition No. 166/2002 filed by petitioner Amol Singh seeking quashing of the proceedings initiated against him under Sections 82 and 83 of

the Code is concerned, learned counsel for the petitioner submits that the mandatory provisions of Section 82 of the Code have not been complied with and, therefore, the entire proceedings deserve to be quashed. Learned counsel submits that from the record, it is clear that neither any proclamation was issued, nor publicly read in some conspicuous place of the town or village in which petitioner Amol Singh ordinarily resides, nor it was affixed to some conspicuous part of the house or homestead in which he ordinarily resides. Learned counsel further submits that there is no evidence that the proclamation was published in a daily newspaper having circulation in the place in which petitioner Amol Singh ordinarily resides and, therefore, the entire proceedings are erroneous.

Learned Public Prosecutor failed to show that the requirements of Section 82 of the Code have been complied with before initiating the proceedings under Sections 82 and 83 of the Code against petitioner Amol Singh.

Section 82 Cr.P.C. reads as under:-

> "82. Proclamation for person absconding. If any Court has reason to believe (whether after taking evidence or not) that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation.

The proclamation shall be published as follows:

> (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides.
>
> (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;
>
> (c) a copy thereof shall be affixed to some conspicuous part of the Court-house.
>
> the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.
>
> A statement in writing by the Court issuing the proclamation to the effect that the proclamation was duly published on a specified day, in the manner specified in Clause (i) of sub-section (2) shall be conclusive evidence that the requirements of this section have been complied with, and that the proclamation was published on such day."

Learned counsel for the petitioner has relied on two decisions of this Court in Chhokha Ram alias Pukhraj Vs. State of Rajasthan, 2005 (5) RRD 1561 (Raj) ; and Pritam Singh & Anr. Vs. State of Rajasthan, S.B. Criminal Misc. Petition No. 439/2005 decided on 23-8-2006.

In view of the aforesaid two decisions of this Court,

in my view, the trial Court fell in error in initiating proceedings under Sections 82 and 83 of the Code against petitioner Amol Singh without complying with the mandatory provisions of Section 82 of the Code. Therefore, the miscellaneous petition No. 166/2002 deserves to be allowed.

So far as criminal miscellaneous petitions filed by petitioners Amol Singh and Dilbhajan Singh seeking quashing of FIR are concerned, it appears that co-accused Charanjit Lal Sharma and Dilbhajan Singh have been arrested and their arrests have been made on the basis of the material collected during investigation and the Challan has been filed against them for the offences under Sections 406 and 409 IPC, which is evident from the report of the investigating officer dated 21.11.2006. Therefore, in my view, no case for quashing the FIR in respect of petitioner Dilbhajan Singh is made out.

So far as petition Amol Singh, petitioner in S.B. Criminal Miscellaneous Petition No. 535/2005, is concerned, it appears that during investigation, a report was called from the investigating officer by this Court and the investigating officer submitted the report in compliance of the order of this Court dated 27-10-2005. By the report dated 17-11-2005, it has been made clear that necessary inquiry from the Office of the Registrar of Companies, New Delhi in respect of petitioner Amol Singh was made and in the inquiry, it revealed that petitioner

Amol Singh ceased to be the Director of the Company M/s. Oriental Automobile Ltd. with effect from 5-6-1997, whereas the occurrence alleged to have been of 10-10-1997, by which an order for supply of 14 jeeps was placed by the complainant and thereafter payments of Rs. 41,84,685/- were made on different dates, i.e. 95% of the costs of the jeeps and, thus, the payments have been made on 14-1-1998. At any rate, as the entire transactions including the order for supply of jeep agreed by the concerned M/s. Oriental Automobile Ltd. to supply the jeeps after having received 95% of the costs thereof in advance, have taken place on 10-10-1997 whereas petitioner Amol Singh ceased to be the Director of the said company from 5-7-97, therefore, if the facts disclosed by the police in compliance of the order of this Court dated 27-10-2005 is taken to be the fact in itself then there appears to be hardly any involvement of petitioner Amol Singh.

In this view of the matter, S.B. Criminal Misc. Petition No. 166/2002 is allowed. The proceedings initiated against petitioner Amol Singh under Sections 82 and 83 of the Code are set aside and quashed and so far as FIR against petitioner Amol Singh is concerned, the investigating officer is to investigate the matter in the light of the report dated 27-10-2005 furnished by them in compliance of the order of this Court dated 27-10-2005 and if petitioner Amol Singh ceased to be the Director from 5-6-

1997 then to proceed with the matter accordingly. The criminal miscellaneous petition No. 2232/2005 (DR.J.) filed by petitioner Dilbhajan Singh is dismissed. The stay petitions in all the three miscellaneous petitions stand disposed of.

(H.R. PANWAR), J.

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